

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

862.2

NEED TO EXPAND THE USE OF PARALEGALS
IN THE OFFICE OF THE ATTORNEY GENERAL

SEPTEMBER 1979



California Legislature

Joint Legislative Audit Committee

GOVERNMENT CODE SECTION 10500 et al

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September 11, 1979

862.2

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report entitled, "Need to Expand the Use of Paralegals in the Office of the Attorney General."

The report indicates that in legal offices comparable to the Attorney General's, many duties are regularly performed by paralegals. These same duties are performed by attorneys in the Attorney General's Office. The report concludes that the Attorney General could employ additional paralegals and maintain its current workload at an annual salary savings of about \$2.8 million, or could expend the same amount of funds and increase its staff by 157 persons, allowing the Office to reduce its work backlog.

The auditors are William M. Zimmerling, CPA, Supervising Auditor; Thomas A. Britting; Steven M. Hendrickson; and Jacques M. Barber.

Respectfully submitted,

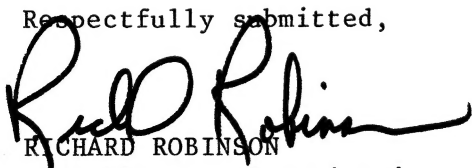

RICHARD ROBINSON
Assemblyman, 72nd District
Chairman, Joint Legislative
Audit Committee

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SUMMARY

The Department of Justice (DOJ) conducts a number of legal and law enforcement programs through the constitutional Office of the Attorney General. One objective of the office is to provide skillful, efficient legal services when representing the State in civil and criminal proceedings.

Our review disclosed that the Attorney General's Office could increase efficiency and reduce legal costs by altering work assignments in the Civil and Criminal Law Divisions. Specifically, much of the work now performed by the deputy attorneys general could be delegated to lower paid paralegal personnel. This shift in workload would free the attorneys for more complex legal duties and could result in either of these alternatives:

- The Office of the Attorney General could maintain its current workload at an annual savings of approximately \$2.8 million, or
- The office could make available 157 additional staff years within current expenditure levels. This expansion would help reduce the office's current case backlog.

In view of these potential improvements, we recommend that the Office of the Attorney General expand its use of paralegal personnel within the Civil and Criminal Law Divisions. This recommendation can be implemented gradually.

INTRODUCTION

In response to a request by the Joint Legislative Audit Committee, the Office of the Auditor General has reviewed certain operations of the Department of Justice (DOJ). Our review, conducted under the authority vested in the Auditor General by Government Code Section 10527, focused on the potential for the Attorney General to expand the use of paralegal personnel within the Civil and Criminal Law Divisions.

The American Bar Association defines a paralegal in the following manner:

Under the supervision and direction of the lawyer, the legal assistant should be able to apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; design, develop or plan modifications of new procedures, techniques, services, processes or applications; prepare or interpret legal documents and write detailed procedures for practicing in certain fields of law; select, compile and use technical information from such references as digests, encyclopedias or practice manuals; and analyze and follow procedural problems that involve independent decisions.

Background

The Department of Justice (DOJ), through the constitutional office of the Attorney General, provides a wide

range of legal and law enforcement services to the State. DOJ's responsibilities include (1) ensuring uniform interpretation and enforcement of the laws and (2) representing the State in all matters before the Appellate and Supreme Courts of California and of the United States. With certain exceptions Government Code Section 12511 requires the Attorney General to handle all legal matters in which the State is interested.

DOJ is composed of three operating divisions--the Civil and Criminal Law Divisions and the Division of Law Enforcement. The Civil Law Division provides legal counsel to state agencies, boards, and commissions. The Division of Criminal Law represents the State on all criminal matters before the Appellate and Supreme Courts. This division also assists district attorneys who are disqualified or otherwise unable to perform their official duties in accordance with Government Code Section 12553.

During fiscal year 1978-79, the Civil and Criminal Law Divisions spent an estimated \$31,685,408. As of June 30, 1979, the two divisions employed 452 attorneys. Each year these divisions handle approximately 16,000 new cases.

The Legal Paraprofessional

The legal profession formally recognized the growing interest in paralegals in 1968 when the American Bar Association adopted a report by its Special Committee on Availability of Legal Services. The report pointed out that many legal tasks can be performed by a trained, non-lawyer assistant working under the direction and supervision of a lawyer. Since the adoption of that report, the field has grown to such an extent that paralegals are now recognized as a distinct paraprofessional group.

As members of a paraprofessional group, paralegals have certain characteristics in common with professionals. For example, paralegals must obtain specific training before entering the field. Typically, a paralegal either completes a specialized paralegal training program or receives prior legal training by working in a clerical or administrative position in a law office before entering the profession.

Scope of Review

Our review focused on the potential for the Attorney General to expand the use of paralegal personnel within the Civil and Criminal Law Divisions. Our field work included reviewing previous audits, studies, and reports regarding the Office of the Attorney General and studying reports and legislative testimony on the use of paralegal personnel.

We also conducted interviews with DOJ personnel, with personnel from state agencies which rely on the Attorney General for legal services, with representatives of private law firms, with federal agencies that use paralegals, and with representatives of both the State Bar of California and paralegal professional associations.

In addition, we administered a questionnaire on the use of paralegals to all attorneys in the Civil and Criminal Law Divisions of the Office of the Attorney General, reviewed applicable records, and collected data on both the Criminal and Civil Law Divisions.

AUDIT RESULT

GREATER USE OF PARALEGALS WOULD INCREASE EFFICIENCY IN THE OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General should respond to the increasing demand for legal services by expanding the use of paralegal personnel in both its Civil and Criminal Law Divisions. Our review of this area disclosed the following information:

- Deputy attorneys general indicated that they would consider delegating many duties they now perform to paralegal personnel;
- Paralegals in other legal environments are relieving attorneys of many tasks that must be performed in a law office;*
- Using paralegals can reduce personnel costs or can increase the amount of available staff hours without increasing costs.

* Legal environment refers to an office, agency, or firm whose primary function is rendering legal services.

Deputy Attorneys General Would Consider
Delegating Tasks to Paralegals

We administered a questionnaire to all deputy attorneys general within the Civil and Criminal Law Divisions of the Attorney General's Office to determine whether they would delegate duties they perform to paralegals. The questionnaire listed 34 duties commonly given to paralegals in comparable legal environments and requested that the attorneys indicate which of these duties they would consider delegating to paralegals. The respondents indicated that a considerable portion of their duties could be delegated. In fact, 62 percent indicated that they would consider delegating 25 percent or more of the duties identified in the questionnaire. Thirty-three percent of the respondents would consider delegating 50 percent or more of those tasks. Appendix B provides by legal section the percent of respondents who would consider delegating 25 percent or more of the duties identified in the questionnaire. Below are listed the duties most often cited accompanied by frequency of responses:

<u>Duties</u>	<u>Percentage of Respondents Cited</u>
- Obtaining information from court records and other documents	57.8%
- Obtaining evidence or records for possible use in legal proceedings	56.3%
- Checking citations, footnotes, and references in written material for accuracy	56.0%

Appendix A lists all of the duties presented in the questionnaire accompanied by the frequency of responses.

In addition to the specific duties identified above, deputy attorneys general identified other activities that could be delegated to paralegals. For example, these attorneys perform a considerable volume of routine collection work in the government law and tax law sections. These cases usually involve the following basic steps:

- An initial demand letter is drafted and sent to the subject of the collection action;
- If the letter is returned as undeliverable, a search is undertaken to determine the subject's current address;
- If no response to the demand letter is received, a complaint is prepared and a summons served;
- If there is no response to the summons, the necessary default judgment documents are prepared and served;
- In certain cases, a court appearance is necessary either to obtain the default judgment or to try the matter on its merits;

- In many instances, the Office of the Attorney General must then attempt to collect the judgment.

Since most of these activities do not require the skills of a deputy attorney general, they could be delegated to paralegals.

One more task which the attorneys would consider giving to paralegals is processing third party liens, another high-volume activity that does not require the legal background of an attorney. A third party lien is an action in which the State has an interest in an ongoing lawsuit although it is not named as a party to the suit. Processing third party liens involves locating files, preparing form letters, and discussing the settlement of a claim with interested parties--duties that paralegals can adequately perform.

Paralegals are Used Extensively in Other Legal Environments

Paralegals are now used throughout the legal profession, both in government and in the private sector, to increase efficiency and to expedite the delivery of services. The Federal Government has greatly increased its use of paralegals. Furthermore, a survey of the nation's 100 largest law firms revealed that the number of paralegals they employed in 1978 had increased by 93 percent over those employed in 1975.

The United States Department of Justice initiated its use of paralegals by creating the position of legal technician in 1971. By April of 1975, 240 persons were employed in this capacity. In August 1975, the United States Civil Service Commission distributed the first paralegal specialist series definition and qualification standards. Since then, the use of paralegals in the Federal Government has increased significantly. According to a census taken in January 1978, the Federal Government employed approximately 1,000 paralegal specialists.

Some of the nation's largest private law firms are also employing paralegals in increasing numbers. A 1978 National Law Journal survey of the nation's 100 largest law firms (those ranging in size from 87 to 434 attorneys) showed that 94 of the firms employed from 4 to 136 paralegals. In our site visits we found that the smallest firm employed 11 paralegals and 32 attorneys, and the largest employed 75 paralegals and 220 attorneys.

Well-qualified paralegals in both government and private legal environments can relieve attorneys of many tasks. We found that paralegals perform a wide variety of tasks. Those working on civil litigation often obtain, review, summarize, and organize evidentiary material. In criminal law, some paralegals digest testimony at the appellate stage of

capital felony cases or summarize evidence and prepare written testimony under oath. Others draft sections of proposed criminal indictments.

The level of responsibility and the complexity of tasks assumed by a paralegal necessarily depends upon the paralegal's qualifications. Five private firms that we visited are using paralegals primarily to obtain, review, summarize, and organize evidentiary material. Before paralegals were employed, the associate attorneys within these firms had performed these tasks.

In contrast to the ratios of paralegals to attorneys within the private firms we visited, the Office of the Attorney General employs only four paralegals and 452 attorneys. The office first used paralegal personnel in 1977 within the Civil Law Division's Public Welfare Section.* After a recommendation by the Attorney General's Management and Manpower Services Section, two paralegals were employed on an experimental basis in the Sacramento office to handle administrative cases that the Department of Health regularly referred to the Attorney General. These two positions were filled by two experienced legal secretaries who had been temporarily upgraded to legal assistants.

* Because of a recent reorganization, the Public Welfare Section no longer exists. The responsibilities of this section have been absorbed by the Government Law Section.

This pilot project proved successful, and a third legal assistant position was assigned to these duties for fiscal year 1977-78. The Attorney General employs a fourth legal assistant in the Civil Law Division's Land Law Section. This paralegal is primarily responsible for conducting factual and legal research.

The Office of the Attorney General can continue to expand its use of paralegal personnel. As in private law firms, tasks that attorneys have traditionally performed can be delegated to paralegals. Specifically, tasks that involve obtaining, reviewing, summarizing, and organizing evidentiary material could be performed, under the supervision of the deputy attorneys general, at less cost by paralegals.

Using Paralegals can Either Reduce
Costs or Increase Available Staff Hours

Expanding the use of paralegals in the Office of the Attorney General can provide significant economic benefits. If vacant attorney positions are converted to paralegal positions and filled by competent individuals, either of these outcomes could result:

- Salary costs can be reduced significantly since lower paid paralegals would be assigned tasks formerly performed by deputy attorneys general, or

- More staff hours can be made available to respond to legal work at no increase in salary cost since the same amount of salary dollars employs more paralegals than attorneys.

Either of these alternatives relieves the deputy attorneys general of the routine work in legal transactions or lawsuits. The attorneys could then devote a greater portion of their time to more complex legal matters.

The Attorney General's paralegals are classified by the State Civil Service Commission as legal assistants. They fall between the attorney and the general office clerical staff in rank. Legal assistants perform a wide variety of tasks ranging from routine duties to those calling for judgment and independent action. The salary range for this position consists of five steps ranging from \$1,250 to \$1,503 per month. In contrast to the legal assistants' salaries, the salaries for attorneys the Attorney General employs range from \$1,663 to \$4,403 per month.

Because of these salary differences, expanding the use of paralegals in the Office of the Attorney General can provide significant economic benefits. Eighty-two percent (267 out of 325) of the attorneys that responded to our questionnaire estimated that they spend 24,112 hours per month

performing duties that they would consider delegating to paralegals. These hours are equivalent to 160 staff years. Since the annual salary for paralegals averages approximately \$17,300 less than the annual salary for attorneys, the potential annual savings resulting from delegating this workload is about \$2.8 million.

COMPUTATION OF POTENTIAL ANNUAL SAVINGS
THAT CAN BE REALIZED BY USING PARALEGALS
RATHER THAN ATTORNEYS FOR CERTAIN DUTIES

	Average Annual Salary (Effective <u>July 1, 1979</u>)	Staff Years Worth of Duties That Could be Delegated <u>to Paralegals</u>	Potential Annual <u>Savings</u>
Attorney	\$34,944		
Paralegal	17,622		
Difference	17,322	X 160	<u>\$2,771,520</u>

Employing paralegals has become recognized as a viable solution to the problem of economically managing an ever-increasing legal workload. The National Association of Attorneys General's (NAAG) Committee on the Office of the Attorney General published a 1976 management manual entitled Paralegal Personnel for Attorneys General Offices. In this manual, NAAG recognized the economic benefit that can be realized by employing paralegals:

In most areas of activity, the Attorney General's workload has increased drastically in recent years. While the number of attorneys has also increased, it

has not kept pace with the expanded activity. Even if it were possible to hire an unlimited number of attorneys, this would not be an economical solution to the problem, since many tasks could be performed by non-attorneys at substantially lower costs. Paralegal assistance constitutes one solution to this problem.

Similarly, the Attorney General's caseload continues to increase although the size of the legal staff remains relatively constant. From 1976 to 1978, in the Civil Law Division the number of cases filed increased about 34 percent, and in the Criminal Law Division it increased about 23 percent. During that same period, attorney staff in the Civil and Criminal Law Divisions increased only about 10 percent. Because the increase in the size of the legal staff has not kept pace with the increase in the demand for legal services, the Attorney General has begun to prioritize client agencies' requests for legal services. This policy, which became effective July 1, 1979, will mean that some requests for legal services will have to be rejected.

Expanding the use of paralegals can enable the Office of the Attorney General to economically respond to a rapidly increasing workload. As previously noted, 267 questionnaire respondents estimated that about 160 staff years of duties could be delegated. As pointed out in the previous table, if these 160 staff years of duties were being performed by 160 paralegals rather than 160 attorneys, the Attorney General

would save \$2,771,520. However, if the Attorney General chose to apply this savings toward employing additional staff, 157 more paralegals could be hired, thereby making available a total of 317 paralegal years instead of 160 attorney years.

COMPUTATION OF STAFF YEARS
THAT COULD BE MADE AVAILABLE BY
USING PARALEGALS RATHER THAN
ATTORNEYS FOR CERTAIN DUTIES

<u>Cost of 160 Attorney Years (160 x \$34,944)</u>	<u>Cost of 160 Paralegal Years (160 x \$17,622)</u>	<u>Potential Annual Savings</u>	<u>Additional Staff Years Made Available from Savings (\$2,771,520 ÷ \$17,622)</u>	<u>Staff Years Already Available</u>	<u>Total Staff Years Possible</u>
\$5,591,040	\$2,819,520	\$2,771,520	157	160	317

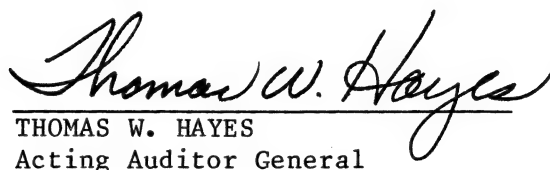
CONCLUSION

The Attorney General's caseload has increased while the number of attorneys has not. This situation is largely a result of budgetary constraints. By increasing the number of paralegals, the Attorney General could either continue the present level of service at a lesser cost or greatly expand services within the same budget.

RECOMMENDATION

We recommend that the Office of the Attorney General expand its use of paralegal personnel within the Civil and Criminal Law Divisions. This recommendation can be implemented gradually.

Respectfully submitted,


THOMAS W. HAYES
Acting Auditor General

Date: September 7, 1979

Staff: William M. Zimmerling, CPA, Supervising Auditor
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September 7, 1979

Thomas W. Hayes
Acting Auditor General
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Dear Mr. Hayes:

We have reviewed the Auditor General's report concerning the expanded use of paralegals in the Attorney General's Office. We concur in the recommendation that more paralegals be employed.

The recommendation is identical to a policy which Attorney General Deukmejian adopted earlier this year. Under the policy, we will begin to increasingly use paralegals. In our current budget requests we are asking the Legislature to fund a substantial increase in paralegals.

We do not concur in the factual findings of the report which indicate that the equivalent of 160 attorney staff years could be delegated to paralegals. In discussing this issue, we recognize that the Auditor General does not recommend that 160 lawyer staff years be converted to paralegal staff years, but uses this number to illustrate the possible impact of a paralegal program based upon the survey conducted by the Auditor General.

We question the validity of the data contained in the report for the following reasons:

1. The fact that a percentage of an attorney's workload could in the abstract be performed by a paralegal does not per se lead to the conclusion that the attorney could in practice be replaced by a paralegal. Such duties may be such an integral part of the attorney's legal work product that it in fact cannot be separated from the attorney's overall legal work and cannot be performed by a non-attorney. We believe that the survey fails to take this practical fact into account, and as a result, substantially inflates the number of attorney staff years which could be performed by paralegals.

2. Paralegals cannot represent clients before judicial or administrative benches or in other representational situations. As a result, relieving attorneys of routine work cannot reduce the number of attorney staff hours needed to represent the People on an hour for hour basis as the survey indicates.
3. The questionnaire used in the survey contains questions asking attorneys to list the number of hours they devote to particular tasks. Some of the questions are overlapping and appear to relate to the same function or workload. As a result, the total number of hours the report finds are devoted to routine tasks which could be performed by paralegals appears to be inflated.

We also question whether some of the functions which attorneys believed may be delegated are actually performed by attorneys.

We are preparing a proposal for presentation to the State Personnel Board asking that the legal assistant class be expanded to parallel the current analyst class. We are making this proposal because we have found that the current legal assistant class provides neither the professional status nor the opportunity for advancement that is needed to implement an effective paralegal program.

Very truly yours,


Michael Franchetti
Chief Deputy

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DUTIES THAT DEPUTY ATTORNEYS GENERAL
ARE MOST WILLING TO DELEGATE TO PARALEGALS

<u>Duty</u>	<u>Percentage of Respondents That Would Consider Delegating the Duty</u>
<u>Investigation</u>	
Obtain evidence or records for possible use in legal proceedings	56.3
Identify and contact possible sources of information	49.2
Obtain statements or affidavits from witnesses	37.8
Prepare digests of statements and materials for attorneys' review	35.4
Interview or correspond with complainants	30.2
Prepare analyses of factual issues	26.5
Screen complaints for referral to appropriate person(s) for further action	18.2
<u>Litigation</u>	
Verify citations, quotations, and statutory references	54.5
Ensure that cases have not been overruled and prepare tables of contents and indices	53.5
Develop and maintain an indexed bank of briefs and memoranda of law	52.0
Prepare and file routine forms	49.5
Assemble exhibits, affidavits, and other legal documents for use in preparing each trial	48.6

Review and organize documentary material pertinent to a case	44.9
Schedule deposition programs and contact witnesses and court reporters	40.6
Prepare tables of contents, indices, or tables of authorities for briefs and other legal documents	39.4
Prepare reports on the status of litigation, cases closed, disposition, and similar matters	39.1
Digest transcripts of testimony and index in accordance with predetermined categories	33.5
Draft letters for signature by attorney to other attorneys in the case or to interested individuals or agencies concerning actions or developments in the case	32.0
Analyze depositions, exhibits, and pleadings to extract facts pertinent to issues argued on brief	29.8
Respond to inquiries from nonparties concerning the status of a case	29.8
Prepare pleadings and other documents, including motions, appeals, and orders for review by an attorney	27.7
In criminal appeals, review trial transcripts and prepare a summary of facts for review by an attorney	9.8
Examine prisoner petitions to determine the type of action and legal issues involved	4.9
<u>Research</u>	
Obtain information from court records and other documents	57.8
Check citations, footnotes, and refer- ences in written materials for accuracy	56.0

Compile citations and references on a subject	44.6
Identify briefs, memoranda, opinions, and other office papers relating to the issue being researched	44.3
Identify and review court decisions for possible relevance to issue being researched	38.2
Review, abstract, or index briefs, memoranda, or opinions for the attorneys	32.3
Prepare abstracts and reports of research findings	27.4
Prepare preliminary drafts or sections thereof for review by attorneys	26.5
<u>Legislation</u>	
Prepare analyses or digests of proposed legislation	14.5
Prepare legislative calendar	7.1
Draft position papers on legislative proposals	6.5

ATTORNEY QUESTIONNAIRE RESPONSES BY LEGAL SECTION

<u>Civil Law Division</u>	<u>Number of Attorneys in Section</u>	<u>Number of Attorneys Who Responded</u>	<u>Percent of Attorneys in the Section Who Responded to the Questionnaire</u>	<u>Percent of Respondents Who Would Delegate 25% or More of the Duties Indicated in the Questionnaire to Paralegals</u>
Tort & Condemnation	26	20	76.9	80.0
Professional & Vocational Licensing	55	35	63.6	85.7
Land Law	20	13	65.0	92.3
Government Law	59	47	79.7	74.5
Public Resources	30	18	60.0	72.2
Business Law	26	17	65.4	76.5
Environmental Law	8	7	87.5	14.3
Tax Law	14	12	85.7	75.0
<u>Criminal Law Division</u>				
Criminal	168	114	67.9	45.1
Antitrust	13	12	92.3	75.0
Consumer Protection	10	10	100.0	80.0
Medi-Cal Fraud	9	7	77.8	28.6
<u>Other</u>				
Opinion Unit	7	7	100.0	0
Legislative Unit	4	3	75.0	0
(Section Undetermined)	<u>3</u>	<u>3</u>	100.0	33.0
Total	<u>452</u>	<u>325</u>	71.9	61.5

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
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